IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.14404 of 2004

Huria Sethi .... ***Petitioner(s)***
Mr.B.P.Trhpathy,
Advocate

-versus-

Commissioner, Consolidation & Ors. .... ***Opp.Party(s)***
Mr.S.Ghose, AGA

CORAM:
JUSTICE BISWANATH RATH

ORDER
26.08.2022

Order No.

12. 1. Heard learned counsel appearing for the parties.

2. Writ petition involves a challenge to the impugned order at Annexure-3 passed by the competent authority in exercise of power under Section 36 of the O.H.C. & P.F.L. Act. Referring to the ground in the writ petition and the observation of the revisional authority, Mr.Tripathy, learned counsel for the petitioner contended there has been wrong interpretation of section 23 of the Hindu Succession Act.

3. Learned State Counsel however taking to the discussions in the revision order and the documents available therein contended there has been right direction of the revisional authority requiring to not interfere in such order.

4. Referring the genealogy in the writ petition, this Court finds the petitioner is the third son. Considering the rival contentions of the parties, this Court finds trough paragraph-6.0, the revisional authority with detail discussion of the documents involved has observed as follows:

> " Considered the sustainability of the orders of the learned lower courts and gone through the documentary evidence. The admitted facts are that 1927 settlement plot No.795 Ac.0.03 under "Gharabari" classification as recorded in the name Bali Sethi. The same corresponds to 1977 settlement plot No.820 Ac.0.03 of Khata No.423 recorded in the name of Maga Sethi S/o Bali Sethi. Now the year of death of Bali is .The learned counsel for the O.P. urged that the petitioner admitted in T.S.No.200/91, that Bali died in

the year 1945 and his widow died in the year 1966. The petitioner has not filed any material evidence as to the death of Bali. The widow of Bali acquired limited interest in the deceased estate of Bali as prescribed by the women's right to Property Act, 1937. That right becomes absolute in the year 1956. Admittedly, Bali's widow died in the year 1966 has acquired absolute right, title and interest over the suit plot which developed upon her daughter, Malati and adopted son Maga. This position has been correctly recorded in 1977 settlement Khata No.431. The petitioner claiming herself as the daughter of Late Malati. She asserted that she is staying in the same house with the O.P. As such, her name should be jointly recorded. The learned counsel for the petitioner has produced a copy of the voters list relating to the suit village for the year 1999. This shows that Maga Sethi and his daughter Pramila were staying in house No.49. In the neighbouring house No.50, Radha Sethi the petitioner aged about 50 years and her husband Budhia Sethi aged about 58 years were staying. The learned counsels for both parties relied upon the decision of the Hon'ble Supreme Court reported in AIR 1996 SC 1826 and 1997 II OLR (SC)-569. There in, it has been laid down that the female heirs already residing in the dwelling house has a right to its continuance. Section 23 of the Hindu Succession Act is a special provision dealing with the partition of a dwelling house and the right of the male and female heirs of the intestate there in. there can be no doubt that a female heir specified in Class-I of the schedule to the Act, inherits a share in the dwelling house absolutely. But section 23 denies right to such female heir to claim partition of the dwelling house until the male heirs choose to divide their respective shares therein. In the revision case at hand the petitioner claims to correct heir name as a co-sharer, but does not pray for partition of the dwelling house. The voter list Supra is a public document and having evidentiary value. Whether the petitioner and the O.Ps. are staying in the suit plot or not is to be determined in the field. The O.P. is the only son of Late Maga and O.Ps. No.2 & 3 are the daughters of Maga. All were recorded jointly against the suit plot by the orders of the learned appellate court. While the learned Dy. Director has accepted the recording of daughters, of Late Maga over the suit plot the petitioner is also entitled to such recording along with the O.Ps. on the same analogy."

5. Reading the aforesaid, this Court finds there is right analysis of the matter and a justified revisional order being passed requiring no interference by this Court in the same. In the process, this Court finds there is no substance in the writ petition, which is disposed of accordingly.

(Biswanath Rath)
Judge

Sks